

*K. Justitia 8/35. b. 1*  
JUSTICE TO A JUDGE.

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AN ANSWER  
TO  
*The Judge's Appeal to Justice,*  
IN PROOF OF THE  
BLESSINGS  
ENJOYED BY  
BRITISH SUBJECTS.

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A LETTER  
TO  
Sir Wm. H. ASHHURST, Knight;  
IN REPLY TO  
HIS CHARGE TO THE GRAND JURY OF  
MIDDLESEX,  
IN THE COURT OF KING'S BENCH, NOV. 19, 1792.  
*written by Mr. Hughes, author of Truth & Reason.*  
THE SECOND EDITION.

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1793.  
[Price Threepence.]

JUSTICE TO A JUDGE

ANSWER

TO THE HONORABLE JUDGE

OF THE SUPREME COURT

IN THE MATTER OF



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PRINTED BY J. B. LEECH

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## TO THE PEOPLE.

*THE following pages are penned in the earnest defence of substantial Justice, and from the impulse of an honest heart.*

*The Author solemnly disclaims all intention of exciting disrespect to the Magistracy; deprecates every idea of resistance to the Civil Power, or wish to obstruct the execution of existing Laws. But merely means to state with candour (both from authorities and facts, which every man may judge of), what appears to him to be fallacies and cruelties, resulting from the present practice of Law: and this he undertakes in reply to an ill-advised publication of a Professional Address, which invites reproof by unmerited praise.*

*He beholds indeed with indignation the theory put for the practice, the form for the essence of Justice; but desires it to be imputed rather to the control of precedent, than to the act of our present Judges; rather to the regulations of their predecessors, than to the operation of their own free-will. And he trusts, that a seasonable declaration of his opinion will not be deemed a defamation of the Courts.*

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Sir W. H. ASHHURST, Knight.

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S I R,

YOUR late charge to the Grand Jury for the County of Middlesex "breathes (it is said) so much the true spirit of the English law, that it must be read with heart-felt satisfaction by all true Englishmen, to whose perusal it is strongly recommended \*." Now, Sir, I have perused it with great attention, and, from every paragraph of it, am induced to believe, that you could not have designed it for public perusal. The sentiments it breathes, are those (strictly speaking) of a lawyer; the commonplace maxims of our Courts; which, perhaps, may be deemed technically true; but are they so in reality? This is what I mean to enquire. It is to be sure, an odd sort of a distinction; a distinction which the people at large can hardly comprehend: for they are *simple* enough to suppose that truth is an abstract principle, a posi-

\* The words which introduced this charge to public notice, under the sanction of the *patriotic* Mr. Reeves.



tive virtue, admitting of no variation—how then (say they) can there exist two kinds of it? How can a general falsehood be made professional truth? These, Sir, are queries which, in the present instance, I presume, ought not to be urged; inasmuch as I am unwilling to believe that you could intend this address to pass beyond the Court in which it was delivered; because your virtues in private life have been long and fully established in the public opinion. But, as an association, commonly called the place and pension preservers, have thought proper to publish this address, as a medium of general political information, I think it the duty of every real friend to truth, to undeceive the public mind, to demonstrate by his best exertions, that, as it will not bear a general application, it could only be intended relatively and partially.

I proceed to consider its several passages, as they are presented to the public eye.

“There is no nation in the world that can boast of a *more perfect system of government* than that under which we live.” This is indeed, *prima facie*, true: the scheme which unites the different orders in our government is admirable—in theory; but what is this to the people? The people ask, where is the *practice* \*?

“No man is so high as to be above the *reach of the law*, and no man so low as not to be within its protection.” The privileged orders surely afford a degree of denial to the former part of this clause, and the observation, that poverty never passed very speedily through our courts

\* With similar sophistry the good Judge might assure the many hundreds of honest men, now starving in the neighbourhood of Spital-fields for want of employment, that England is a land flowing with milk and honey.

of law, in search of its rights, seems to contradict the latter. The position in both its parts, is also strongly combated by common observation, as well as by Mr. Shenstone's remark (Essay 23.)—"Laws are generally *found* to be nets of such a texture, as the little creep through, the great break through, and the middle-sized are alone entangled in."

Again, by the authority of Dr. Law, which is adopted by Lord Lyttelton, in his Persian Letters—"It is certain that the whole power of the King of England cannot force an acre of land from the weakest of his subjects; but a knavish attorney\* will take away his whole estate by those very laws, which were designed for his security. The judges are uncorrupt, appeals are free; and notwithstanding all these advantages, it is usually *better* for a man to *lose his right* than to *sue for it* †." I present, Sir, the sentiments of authors of reputation rather than argument, because I have ever observed men of your profession to be extremely partial to *authorities*. In this paragraph you are pleased to add, that "the power of the crown on the one hand, and the liberty of the

\* A *noble* (better would it have been, had he been content with the epithet *learned*) Chief of one of our Courts, lately observed that, in his opinion, "the majority of attorneys were honest men;" though his patron, a much greater authority, has openly with an *oath*, declared that he did not think there was an honest solicitor in the kingdom. But a still greater, and much more *upright* judge—at least of men and manners (Mr. Shenstone, Essay 21.), says, "I question not but there are many attorneys born with open and honest hearts; but I know not *one*, that has had the least practice, who is not selfish, trickish, and dissingenuous."

† "When suit begins, there's Plaintiff and Defendant,  
"But both are Plaintiffs, long before the end on't."

subject on the other, are both effectually secured, and at the same time kept within their proper limits." The *power* of the crown is indeed strongly *secured*:—that its limits are defined, appears to be denied by the late far-famed vote of the House of Commons—"the power of the crown has increased, is increasing, and ought to be diminished."—Whether the liberty of the subject be limited, we need not inquire; every man, especially in these times, feels the forceful truth of the position; whether it be secured, let us ask the sufferers under *press-warrants*, general warrants, the powers of an attorney-general, &c.

The law of this country (you tell us) only lays such restraints on the actions of individuals as are necessary for the *safety* and *good order* of the *community at large*. Was the marriage act necessary to the community at large? Or, was it not rather the spawn of aristocracy?—Are the game laws necessary for the good order of the community? That constitutional Judge, the late Sir William Blackstone says, that they are "*a tyranny to the commons*."—Doctors will differ in opinion.

So much for authorities. I might appeal to reason; but it is not the fashion of the present day to listen to her voice. Precedent is all in all.

Your two next paragraphs are general remarks not particularly applied to this country, but to the truth of which every man will bear testimony. Even Mr. Paine, whatever his calumniators may say to the contrary, most fully admits them. In the latter you observe, that "it was necessary that mankind, on entering into the state of society, should give up into the hands of the governing power of the state that species  
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of liberty which resulted from a perfect *equality* in all men. A state of society cannot subsist without subordination." So Mr. Paine—"Men are born and always continue free and equal in respect of their rights. Civil *distinctions* are founded on *public utility*."—and "only" so. Subordination is necessary; distinctions are necessary: but are privileges necessary?

"Happily for us," you say, "we are not bound by any laws, but such as are ordained by the *virtual consent* of the whole kingdom, and which every man has the means of knowing." These, Sir, I have often heard, and heard with astonishment, to be the presumptions of law. What says fact?—"Virtual consent" is a shuffling evasive phrase; a phrase very unfit for the mouth of a lawyer. "Virtual consent," is consent in effect, though not in form; whereas the business of our lawyers is always abundant in form, but too often with little just effect. But let us put the plain honest question. It is certainly right, it is really necessary that government and the people should understand each other. Long has it been the boast of writers upon the British constitution, long has it been a maxim exulted in by every class of the natives of this country, that, notwithstanding the present contradictory practice, a British subject is to be governed only by laws to which he has consented by himself or his representative. Now, says the Duke of Richmond (a man of much present importance in the cabinet, and a firm *unshaken* friend to a reform of all public abuses), "if this is not a maxim of our constitution, we should instantly abandon the error; but if it is the essential of freedom, founded on the eternal principles of justice and wisdom, and our unalienable birth-right, we should not hesitate in asserting it\*."

\* Letter to Colonel Sharman and the Irish Volunteers.

It is right that this question should be openly decided—that the people may be no longer “*virtually*” misled, but may have a positive principle for the future decision of this point. But, however the right may be determined, though I can scarcely think that even in these times of depravity, we have any men hardy enough to deny it, yet the fact is, that the public consent is not given to the formation of the laws of this country. “The representation of the people is partial and unequal; *a vast majority* of the community is left unrepresented; and its most essential concerns, *life, liberty, and property*, continue in the absolute disposal of those whom they do not chuse, and over them they have *no control*\*.”

When you add that “*every man* has the *means of knowing* the laws” of our country; we must ask what means? But if we do not see the fact, we discover at least in this assertion an hyperbole of compliment both to the general wealth and intellect of our countrymen. You do us the honour to suppose that all our people are able to purchase more than an hundred volumes of law folios, with commentators and reporters beyond all numbers, and that they are able to comprehend and digest what our Judges often disagree in the construction of. This, Sir, is what you seem pleased to assert, though your honest brother Blackstone has declared them to be “not a little intricate;” and that in one statute only, 5 Ann. c. 14. there is false grammar in no fewer than six places, besides other mistakes.” The plain truth, which includes your whole position on these points, seems to be excellently given by the admirable author of the

\* Letter to Colonel Sharman,

World \*, “The statutes at large are acts of parliament, which all must obey, and yet few only can purchase. Like the sphynx of antiquity, they speak in enigmas, and yet devour the unhappy wretches who comprehend them not.” So that this assertion, Sir, amounts only to another presumption of law: and lawyers have founded a *wise* and *just* maxim upon it—viz.—*Ignorantia juris neminem excusat*†.

Next with respect to crimes—“crimes,” (you say,) “must not go unpunished.” But in no country do so many go unpunished, as in our own; for instance, Barrington, sixteen-string Jack, &c. &c. “We may venture to boast, that in the administration of the criminal law, no nation has ever been so *careful of the lives* and liberty of the subject.” This is not a technical, but indeed a real truth; and a truth of sorrow to the just and the discerning. The public papers stated the following cases—April 17th, 1790. At the Old Bailey before Lord Kenyon, a woman was indicted for stealing a *lawn* cap; the evidence of the theft was clear, and the poor creature trembled for her fate: when lo! the cap turned out to be made of *muslin*--verdict *not guilty*. September 1789: Maria Morris was indicted at the Old Bailey for robbing her ready furnished lodgings; the robbery was proved, the goods were found at a pawn-broker's, pledged by her; the defence was, that she rented the *whole house* for a year certain: *ergo*, Maria could not possibly be guilty of robbing lodgings; she only robbed the *whole house*: Maria was legally acquitted.

\* No. 140.

† Caligula wrote his laws in a very small character, and hung them up upon high pillars, the more effectually to ensnare the people. We write them in an old black letter, &c.

I will



I will state one other instance—December 8, 1764. Balf and M'Quirk, leaders of a hired mob at Brentford election, were convicted of aiding in the murder of Mr. Clarke; after the trial, the prisoner's counsel moved that there was a *flaw* in the indictment, and this was debated on the Monday following: when Mr. Justice Aston quoted the following reprimand from that great lawyer Hale.—“The picking out of flaws in indictments, whereby justice is evaded, is a scandal to law, a degradation to justice, and a dishonour to God;” and yet these cut-throats were again turned loose upon the public.

True it is, that under the benign influence of the Protestant religion, our laws require, that justice shall be executed in mercy: but in these instances, there appears indeed much of mercy, but where is their justice? Here is abundant mercy to thieves and murderers, but where is the protection promised to the honest and the good? It should seem that reason and the civil rights of man, were sacrificed to quibble, subtlety, and fastidious refinement.

“The administration of the criminal law” is indeed lenity itself, while the letter of the law breathes nothing but blood and slaughter\*. Can this be justified to the public? The legislature is accountable for the spirit of our laws; but it is the duty of a judge to do, not to deliberate; to execute, not to scrutinize his office. “The privilege (you say) of having the matter

\* No less than 160 acts which men are daily liable to commit, have been declared by parliament to be felonies without benefit of clergy. So dreadful a list, instead of diminishing, increases the number of offenders. The injured through compassion, will often forbear to prosecute: juries through compassion, will sometimes forget their oaths, and either acquit the guilty, or mitigate the nature of the offence: and judges, through compassion, will respite one half of the convicts, and recommend them to mercy. Thus long impunity teaches the offender to contemn the laws. Blackstone.

tried

tried before a jury of his equals, is the most valuable *birth-right* of an Englishman," and that "the law is no less careful in protecting men's civil rights and property." The protecting privilege here stated is indeed an inestimable blessing—but is it uniformly enjoyed? If not, how, Sir, do you justify the refusal of it? If it be, in your own emphatic language, a *birth-right*, how can it, without a gross violation of constitutional principle, ever be withheld? And yet this is done, and to an enormous extent. By the excise laws, (under which seven millions of revenue are now collected) the power of deciding upon the property of the subject, is placed, not in the hands of a jury of his peers, as the constitution directs, but of persons absolutely appointed by and removeable at the sole pleasure of the crown, without the right of appeal to an independent tribunal.

Here lies the boasted *bulwark* of British liberty.

When it was attempted to lay cyder under the collection of the excise, the country gentlemen opposed it as an alarming innovation, contending that every private man's house was his castle, which if ever suffered to be invaded, there would be an end of their freedom. And the sturdy resolution of the people rejected an excise upon tobacco, when proposed by that corrupt minister Sir Robert Walpole.

But now, "when we consider the various and almost innumerable branches of the revenue, which may be in their turns the subjects of fraud, or at least complaints of fraud, and of course the objects of this *arbitrary* jurisdiction, we shall find that the power of these (excise) officers of the crown over the property of the people is increased to a *very formidable* height\*."

\* Blackstone, vol. iv. p. 281.

Alas!

Alas! the people of the present day seem not at all alive to any sense of the inestimable value of this *birth-right*, which they are losing.

“The trial by jury is the most transcendent privilege which any subject can enjoy. The trial by jury is that which preserves in the hands of the people that share, which they ought to have, in the administration of public justice, and prevents the encroachments of the more powerful and wealthy citizens, it is a duty which every man owes to his country, his friends, his posterity, and himself, to maintain to the utmost of his power this valuable constitution in all its rights, to amend it wherever it is defective; and, above all, to guard with the most jealous circumspection against the introduction of new and arbitrary methods of trial, which under a variety of plausible pretences, may in time imperceptibly undermine this best preservative of English liberty\*.”

We are also assured by the same author, as well as many others, that no Englishman can be in any shape molested, either in person or property, otherwise than by a judgment of his peers, and according to the law of the land.—And yet we learn that heretofore Mr. Wilkes, as well as Messrs. Wheble, Miller, and other printers, were violently and illegally seized and imprisoned, both in person and property, by an assumed authority of those very men, who were bound to protect them.

The same game seems to be playing over again. Mr. Holland of Oxford-street, and Mr. Ridgway, of York-street, St. James's, have been lately dragged from their families and their business, been imprisoned even with felons, during eight and forty hours, in po

\* Blackstone, vol. iii. c. 23.



fitive avowed refusal of *all bail* \*, under the *absolute order of a bench-warrant* : have in defiance of the boasted liberality and justice of the maxim, which says, that our laws presume every man to be innocent, till his guilt be made manifest—been punished first, with a promise of being heard afterwards.

So much for the security we enjoy under the vaunted right of protection by juries. So much for the share, which the people are said to have in the administration of public justice.

You are pleased, Sir, to conclude this paragraph with hoping that “there is no nation where the law is more uprightly and impartially administered than in our’s.” I hope too, that our present Judges are upright, but this I know—that our Judges have not always been so†.

Asto your impartiality—you have *heard*, I presume, recent instances of suits being stayed in our courts for more than forty years, in cases too where the rich with-held the property of the poor. Does not such delay and its attendant expence operate (though not directly, yet) eventually to a partial administration of justice? Can that distributive justice be uniformly just, which

\* Where, in this case, was the spirit of the celebrated act of Habeas Corpus? Where was the exalted statute of 22 and 23 of Car. II.?

† What is called the *uprightness* of judges is not enough. “Counsel are often in collusion with the attornies, called pettifoggers; favour their prepared evidences, and abuse those who are unprepared, with a degree of profligate impudence and unprincipled villainy, which the judges should correct with more determined severity; if they wish to preserve reverence for the laws, and respect for those who administer them.” *Lessons to a Prince.*



is not speedy, and without expence in its distribution \* ?

“ That our commerce is extended beyond the example of former ages,” is owing, not to “ *these blessings*,” but to an unexampled concurrence of circumstances.

We at present enjoy almost the whole of the French trade ; but how long shall we enjoy it ? We at present possess a very advantageous treaty with France, but are madly hastening to cast it from us. We at present abound in a bastard wealth, a provincial *paper coin*, the fallacy of which a war will detect.

I deny that there “ have been publications in which the author disclaims all ideas of subordination, and that the example of a neighbouring nation has been recommended as a model for our imitation,” either by societies or individuals. The real “ circumstances which gave rise to the proclamation” are not visible to the nation. You seem fond of the common cant of the day, telling us that “ *sowers of sedition* are abroad.” Sedition is a word of much latitude ; and I observe that men who wish to support the measures of the present government, are very fond of dealing in *generals*. If there really exist persons, who are endeavouring to destroy the *true* constitution of our country, point them out and punish them. But it is the prevalent presumption of thinking men, that we have no such persons among us ; but that the alarm has been spread to answer a secret purpose. And this supposition is confirmed by your observation that—“ the officers of the

\* Pure justice is now gratuitously rendered in France, and by judges chosen for a time by the people. Under the establishment of our Saxon ancestors, and by the honest operation of the true principles of our constitution, Englishmen are entitled to the same rights.

crown have taken all due pains to bring such offenders to justice as have come to their *knowledge*." If there be no other offenders than those thus held up to public view, the charge must rest upon Paine, Ridgway, Symonds, Holland, and others—the publishers of some unpleasant political tenets; tenets that have eternalized the names of Hume, Harrington, Selden, Sydney, Hambden, Locke, Pym, Milton, Johnson, and Price. Here, and here only are found those pretended conspiracies, which every one enquires for, but no one can further reveal.

Judges have created many seditions, where the people could discover no such thing\*. And what are the conclusive tenets of the principal writers, for publishing whose works so many industrious men have been snatched from their families by the high hand of power, and hurried into the horrors of a prison?

"Revolutions" says one, "on the broad basis of these principles" (the real representative system) "are making their way in Europe; it would be wisdom to anticipate their approach, and produce them by *reason* and *accommodation*, rather than commit them to the issue of convulsion†."

"We admonish our governors" says another, "to reform" (the representation of the commons) "while they retain the force to reform

\* Sedition is at present a very undefined word. The partisans of government wish to confound it with resistance of oppression, which is a natural, unalienable right.

Resistance of oppression is the right of taking arms against unconstitutional and illegal restraint. Sedition is an avowed overt act of opposition to ~~existing laws~~ constitutional laws.

† Mr. Paine's Rights of Man.

with dignity and security. The grievances of England do not now, we confess, justify a change with violence; but they are in a rapid progress to that fatal state in which they will both *justify* and *produce* it \*."

"If a wish to reform," says a third, "this manifest abuse" (the mock representation of the people) "be the same with an intention to overturn the British constitution, I must certainly admit the charge; but I am seriously and decidedly of opinion, that in the present circumstances of this country, no man can be justified in going farther than a complete and *effectual* reform in the representation of the people and the duration of Parliaments. These are my sentiments, and the sentiments of my political friends †."

What is there, Sir, in these suggestions that can intimidate men who wish well to their country?

The fact is, that great pains have been taken to traduce the principles of those who are the best friends of the people; who aim only to *realize* our boasted constitution, and for that purpose to remove the rottenness of our present representation; to restore "the right of voting universally to every man, not incapacitated by nature for want of reason, or by law for the commission of crimes, together with annual elections;" knowing "that all other plans have been found insufficient to interest and animate the great body of the people, from whose earnestness alone any reform can be expected." This is the particular, "which of all others most deserves the

\* Mr. Mackintosh's *Vindiciæ*.

† Cooper's Reply to Mr. Burke's *Invective*.

attention of the public, as it would include every other advantage which a nation can wish\*."

Sir, the times are extremely critical ; the public mind is highly agitated :—it yet remains to administration to deliberate, whether (in the phrase of the people,) honesty be not the best policy?—Whether they may not, by timely concession, even honourably preserve some portion of the spoils of which they are so tenacious? Whether their own security, as well as that of their country, demands not an endeavour to conciliate the esteem of the public?

Opinion is the true ground and foundation of all government, and that which subjects power to authority. For power, arising from strength, is always in those that are governed, who are many; but authority, arising from opinion, is in those that govern, who are but few†."

The depositaries of delegated power, whether called princes, senates, or parliaments, are not proprietors or masters; they are subject to the people, who form and support the society; subject by an eternal law of nature; which has ever subjected a part to the whole.

The people, Sir, the people are in every kingdom the natural sovereign: a truth, which in most other parts of Europe they seem at length to have discovered; and are beginning to assert their sovereignty: I wish the frauds and fallacies of your profession may not soon prove one of the

\* The Duke of Richmond's Letter.

† Sir William Temple's Essay on the Origin and Nature of Government, p. 34.



( 19 )

leading causes \* of their doing the same in Great Britain.

I am, Sir,

JUSTITIA.

*London, Dec. 20, 1792.*

*To Sir W. H. Ashburst, Knight.*

\* "If I were able to describe the full extent of the effects of a rational system of jurisprudence on the happiness of men, and then exhibit the perversions and corruptions attendant on this business in most of the governments of Europe, it would furnish one of the most powerful arguments in favour of a general revolution, and afford no small consolation to those persons who look forward with certainty to such an event."

BARLOW'S ADVICE.

"Happy the nation, where the knowledge of the law is not a science." *Beccaria*, chap. 14.

THE END.

leading causes of their doing the same in Great Britain.

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London, Dec. 20, 1892.

TO THE HONORABLE THE SECRETARY OF THE ARMY

... who look forward with certainty to their reward.

It is the policy of the Government to provide for the education of the children of the Indian population in the region where the knowledge of the law is not



UNIT 3